App. F. IX-4

Previous References

335 -33- I-12

1935-36 (Mis)

Mis File No. 144-35

Serial Nos. 1 to 2

Letter References.

Jamy 193-38. (1-4)

& 375-41. 1-2

18

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 2

Part B for January 1936

SUBJECT.

Lands belonging to Sri Degila Pulle, Kankanhalli

NO 866

26-12-35

To M/s Bandi Naidaiya

c/o

M. K. N Srinivasan.

M.A.B.L.

Advocate

Bangalore

Petitioners state that there is no reason to revise the orders already passed

WD 03607—GPB—22,500—2-8-35

Serial No.

1

Petition of 31.10.1935 filed by Mr K. N. Srinivasan Advocate for the Petitioner Bandi Mallayya Kandukalla praying for a reconsideration of order passed in my appl No 27/1929-30 and in my Review of 1933-34 and for confirmation of his title to land held by him such time as may be deemed just & equitable & requesting that pending the disposal of this review petition the execution of the decrees orders be stayed.

(1) The subject matter of the petn in the same action was presented by him previously on 19.10.35 except that is set forth in para 12 of the P. & A. of appl in view of which is set forth in paras 1 to 11 (P. & A.) & also in para 12, was the ref. to law for favourable

+ P. memo 33-1-36 with subsequent

2) Rule for orders

Govt 29.11.35

3 This is a case which came up to the first instance in appeal against the order of the D.C. and Govt dismissed the appeal finding no reason to interfere with the D.C. order

This case

NOTE.—Contn. Sheet.

WD 03591—GPB—30,000—18-7-35

478/ Petn from one of the tenants of lands belonging to Sri Regila Mutt. Kankanhalli

File No. of 193 General and Revenue Secretariat

Received (Vide Revn/petn dd 19.10.33 Flag P) and the Hon II Member (now I Member) saw for reasons explained in the order (Flag H) saw no reason to modify the orders of Govt passed previously ~~Both~~ after hearing the parties.

A kind perusal of the present petn and the previous Revn petn shows that paras 1 to 10 of the petn are verbatim Copy of the previous petn and the petr has tried to urge in para 12 of the present petn "that the Assumptions on which the Govt have proceeded to act is not correct". This cannot be accepted as for this point could have been urged when he was given a hearing on the last occasion & he has failed to do so.

(5) In affirmed the petr will be informed that Govt see no reason to revise the orders passed.

4/12/35

Gen: Secy) Ayes. Hon. 23/12 23/12

Dy. Secy

Gen Secy 24/12

Every attempt was made to find out the original appeal file in which there was a notice before Govt as in para 3 of the petn & it is not traceable for being pushed in this connection as directed by the Addl. Secy in the order Copy in the appeal case (Flag A) is produced for reference

GS 18/12

GENERAL DEPT. 19 DEC. 1935

478

Serial No.

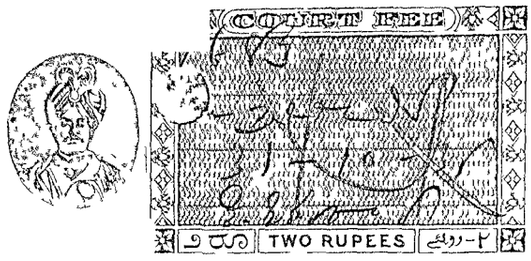
Endn
Letter No 866 dy 26.12.1935 fr The petitioner c/o Mr K.N. Srinivasan Advocate Bangalore city. intimating that there are no reasons to revise the orders already passed in the matter.

5
6/1/36
6/1

WD 03591—GPB—30,000—18-7-35

File No. of 193 .

General and Revenue
Secretariat



BEFORE THE GOVERNMENT OF HIS HIGHNESS

THE MAHARAJA OF MYSORE - BANGALORE.

Muzrai Review Petition No. of 1935-36.

Muz 144-35—1

PETITIONER:- =(Vs.)= OPPONENT:-

Bandi Mallayya, son of Bandi - Chennappa, re- -sides in Kan- -kanhalli.

Sri Nirvana Swamy of - Sri Degala Mutt, Kan- -kanhalli.

The Petitioner above-named - most humbly and respectfully prays that - for the reasons set out below, the Govern -ment be graciously pleased to review - - their order passed in Muzrai Appeal No. 27 of 1929-30 and confirm the title of - he Petitioner to the lands in dispute.

1. The Petitioner is the absolute wner of S.Nos. 274, 275 and 1 acre 12¼ - guntas in S.No. 251 and 21¼ in S.No.252 - of Kankanhalli. Though these lands are - now claimed by Sri Degala Mutt of Kankan- -halli, they were in the holding of inde- -pendent owners long prior to their being granted as Inam to the Mutt, and the alie -nations of the first two numbers date -

back

back to a period more than 50 years - - prior to 31st. January 1853, and the - - other numbers were alienated a few years later and ever since then the said alie--nees and their successors in title have been in peaceful and undisturbed posse--ssion of these lands in thier own right excercising all acts of ownership recog--nised in law.

2. That long before 1829, the - owner of S.Nos. 274 and 275 was one Gavi Dasana Betta, who sold these lands to one Mariappa, who on 17-7-1829, transferred these lands by a deed of exchange to one Pamani Naganna with full rights of owner--ship. Even then these lands had been - converted into co-coanut gardens yielding fruit and therefore the original transfer must have been long prior to 1800, seve--ral years before they were granted as - Inam to the Opponent's Mutt.

3. That since then the said Na--ganna and his decendents - Sanjeeva Setty Rama Setty and Krishna Setty were in posse--ssion and enjoyment of these gardens, ex--ercising all acts of ownership and on - 18-11-1901, Rama Setty's wife Lakshamm[illegible] and

and her adopted son Rama Setty and - Krishna Setty's son Venkatappa mort--gaged ~~of~~ thses lands to one Malle - Gowda for a valuable consideration of Rs. 1500/- to discharge a prior en--cumberance created by them in favour of one Appannappa under a deed dated 24-4-1890, and subsequently the said Rama Setty and Krishna Setty effected two hypothecations of these lands in favour of the said Malle Gowda under deeds dated 15-1-1906, and 12-5-1906 respectively, with a view to discharge these various debts - the said Rama-Setty and Krishna Setty subsequently sold these lands to the Petitioner - for a valid consideration of Rs.2650/- under a duly registered Sale deed - dated 8-1-1909.

4. That from the recitals - in the said sale deed and the other documents it is manifest that the - 'etitioner and his predecessors in - :itle were the absolute owners of - :hese lands subject to the payments)f assessment to Government Cash - - :ent at a fixed rate to the Swamies)f the Opponent's mutt after they and the

the successive Swamies also have recog-
-nised these rights of ownership and -
have accepted the rent. They are there-
-fore now estopped in law from setting
up any superior rights to these lands.-
other than their right to receive rent
at a fixed rate.

5. That so far as the portion in S.No. 251 is concerned a portion of land measuring 37 guntas in extent was originally owned by one Kapinappa, who sold it to one Bylappa alis Appannappa under a sale deed dated 4-12-1903 and - after the death of the latter his wife and legal representatives, sold this land to the Petitioner under a duly registe-
-red Sale deed dated 18-11-1906. The - other 15¼ guntas in this number origi-
-nally belonged to two brothers Bale - Veerabhadrappa and Mahantappa who sold it to one Sanjeeva Setty on 23-9-1873 - and after Sanjeeva Setty's death his - brother Krishna Setty sold this land to one Chinna Venkatamma on 25-4-1879 who in turn sold it to one Imam Sab under - a sale deed dated 3-1-1894. The said - Imam Sab and his son Ghouse Khan sab,

mortgaged

mortgaged this land and 21¼ guntas in - S.No. 252 to one Kada Setty under a mort gage deed dated 14-7-1910 and to discha- rge this mortgage debt the said Imam Sab and his son sold these twolands to the Petitioner under a duly registered Sale deed dated 29-12-1912. Even these lands were being enjoyed by the Petitioner and his predecessors in title as absolute - owners subject to the liability of paying rent in kind at a fixed rate of 50% - - called Rajwar and though the quantum of produce might have varied according to the yield of the lands, the rate at - - which the payment of rent had been fixed namely 50% of the produce grown, never changed. And as the law now recognises it is not the actual quantity of ~~of~~ - - produce (that is paid from year to yaar that determines the nature of the tenancy as permanant or tenancy at will) but - the rate that determines the nature of the tenancy and when once it is found - that the rate never varied, the tenancy is deemed to be a permanent one. This has been accepted and recognised by the successive Swamies.

6. That further it is apparent

from the fact that these lands had been leased out for co-coanut and areca nut - gardens, that the intention of the lessors was to lease these lands on permanent - tenures, as otherwise no tenant would - be willing to enter into a lease to - - plant cocoanut and areca nut gardens on these lands if the tenancy was a precari -ous one and if he was liable to be evi- -cted from these lands, even before he - had the chance to realise the fruits of his labour and he would not have any - - incentive to rear these trees for a period of atleast 10 to 15 years till they begin to yield fruit, for absolutely no return whatsoever for all his labour and cost - and go on paying rents to the Land Lord - for no return whatsoever.

7. These fundamental facts have not been considered by the Government - when they decided the appeal and the - - Government have not seen the title deeds till now. Thse documents would have con -clusively established the Petitioner's absolute title to these lands.

8. But the Learned Sub-Division Officer of Closepet who was directed by

the Deputy Commissioner to hold a detai-
-led enquiry into this matter and to sub
-mit a report, inspected these title - -
deeds and was satisfied about the absolu
-te rights of the Petitioner and the - -
holders of other lands and submitted a -
report on 26-3-1928, holding that since
most of the alienations were prior to -
1853, the rights of the ryots could not
be interfered with. The learned Deputy
Commissioner also concurred with the - -
findings of the Sub-Division Officer. -
But the Learned Muzrai Commissioner, - -
though he has not differed from the - -
findings of the Sub-Division Officer, -
that the alienations were prior to 1853
has expressed an opinion on the erroneous
assumption that the alienations prior -
to 1853 were only by way of mortgage -
and as such the alienations were not -
permanent. But there were no mortgages
created by any of the Swamies, and as such
the opinion expressed by the learned -
Muzrai Commissioner cannot be supported
in law. The mortgages referred to were
between the alienees interse and as such
these cannot in any way alter the cha-
-racter

character of the original alienations. - Therefore the order of the Learned Muzrai Commissioner, casting a cloud on the title of the Petitioner, and suggesting a fresh lease of these lands to the Petitioner - for a fairly long period at an enhanced - rate of rent, is tantamount to a denial - of the prescriptive title which the Peti- -tioner has acquired for these lands.

9. That in confirming this order of the Learned Muzrai Commissioner, the - Government have been pleased to observe - that as the lessees have been paying Raja -pal to the Mutt in the form of either - produce or its value and as the Rajapal - paid to a Land Lord is, from its nature, a fluctuating amount, that it was an - - annual gutta payable by a tenant-at-will and as the alienations were made without the sanction of the Governement, they - - were to be treated as null and void and - that throughout the relation between the Petitioner and other holders has been that between tenant-at-will and land lord and - that there could be no adverse possession by the former against the latter.

10. But

10. But it is respectfully - submitted that as set out in para 5 - supra it is not the quantity of produ -ce given by the tenants to the land - lord that determines the nature of the tenancy. It is the rate that determi- -nes it. The quantity might vary accor -ding to the yield, but if the rate - or proportion at which the payment to be made is fixed as in the case of - - Rajpal at 50% whatever may be the yield them the tenancy is deemed to be perma -nent. And further it is a recognised principle of law that even as between land lord and tenant adverse possession can be successfully pleaded when the - land lord seeks to exercise any right or make any claim which is inconsistent with the terms of the tenancy. That - as regards the observations of the - - Government that the alienations should be considered as null and void as they were made without the sanction of the Government, it is respectfully submitted that in so far as the Government have not differed from the findings of the Sub-Division Officer that the aliena-

-tions

alienations were anterior to 1853, - the said alienations cannot be treated as null and void in the light of the - Chief Commissioner's Notification No.- 266 dated 17-11-1877, and the lands -- ought to have been confirmed to the -- Petitioner and other holders on the -- terms prescribed in the Land Revenue - Rules and should not be treated as --- -Devadaya Inam Lands.

11. That in deciding the - - Muzrai Appeal No. 27 of 1929-30 and -- the Muzrai Review Petition No. 9 of -- 1933-34, the Gracious Governemnt have proceeded on the assumption that lease is not an alienation recognisable in - law and in which a title has been secured by an alienee and as such though the - alienation in favour of the Petitioner's predecessors is prior to 1853, still - it cannot be dealt with in accordance with the Inam Rules contained in the - Chief Commissioner's Notification No.- 266 of 17th. November 1877 and as that no relief could be granted to the - - Petitioner in respect of his title to the lands held by him.

12. But it is most respect-
-fully submitted that the assumption -
on which the Government have proceeded
to order - is not correct. It is an -
established principle of law and the -
principle is also recognised and accep
-ted under the Transfer of Property -
Regulation that Lease Holders rights -
of whatever kind are real property and
that not only are they alienable and -
transferrable inter vivos but are also
heritable like other properties. As -
such the case of the Petitioner is dis
-tinguishable from those of the other-
tenants and is a fit case in which the
Government can grant relief to him - -
under the Inam Rules contained in the-
Chief Commissioner£ Notification No.--
366 of 17-11-1877.

13. That if an opportunity is
granted to the Petitioner he will be -
able to satisfy the Government that --
the position of law submitted by him is
correct and that he has a real grievance
calling for interference at the hands
of Gracious Government.

WHEREFORE,

WHEREFORE, the Petitioner most humbly and respectfully prays -- that the Governement be graciously ~~be~~ pleased to review their orders passed in Muzrai Appeal No. 27 of 1929-30 and in Muzrai Review Petition No. 9 of - - 1933-34 and confirm the title of the - Petitioner~~x~~ ~~x~~ to the lands held - by him on such terms as may be deemed just and equitable.

That in so far as the order of the Govermment is being executed - and the gardens are being auctioned for sale it is further respectfully prayed that pending the disposal of this Review Petition- the Government be pleased to stay the execution of their order;

B A N G A L O R E.
31st.October 1935.

L.T. Mudigubo Mallappa

Before the Government of His Highness the Maharaja of Mysore
Bangalore **ಕೋರ್ಟಿಗೆ**

Mysore Review Petition No 1935-36.

193 -3 ನೇ ನಂಬರು

ವಾದಿ ಯಾ ಅರ್ಜಿದಾರ್ Petitioner		ಪ್ರತಿವಾದಿ ಯಾ ಆಪೋನೆಂಟ್ Opponent
Bandi Mallappa Son of Bandi Chennappa	vs.	Sri Nivana Swamy Sri Degala Mutt.

ಮು|| ರಾ|| ಕೆ. ಯರ್. ಶ್ರೀನಿವಾಸ್, ಎಂ.ಎ., ಎಲ್.ಎಲ್.ಬಿ., ಅಡ್ವೊಕೇಟ್,
ಬೆ. ವಿ. ಹೈಕೋರ್ಟು ಕಮಿಷನರ್. ಬಾಕ್ಸಿ. ನಂ. ೨೧೨೯. ಬೆಂಗಳೂರು ಕಂಟೋನ್ಮೆಂಟ್.

ರವರಿಗೆ Petitioner ಬರೆಸಿಕೊಟ್ಟ **ವಕಾಲತ್ ನಾಮಾ**

ಈ ಮೊಖದ್ದಮೆಯಲ್ಲಿ ತಾವು ನನ್ನ ಪರವಾಗಿ ಆಕ್ಷೈರುವರಿವಿಗೂ ಕೋರ್ಟ್‌ನಲ್ಲಿ ನಿವಾದ. ಜರುಗಿಸುವುದಕ್ಕೂ ನನ್ನ ಪರ ಆಗುವ ಎಲ್ಲ ವಿಧವಾದ ಆರ್ಡರನ್ನೂ ಡಿಕ್ರಿಯನ್ನೂ ಜಾರಿಕ್ರಮನಡಿಸಿ ಹಣ ವಸೂಲು ಮಾಡಿಕೊಳ್ಳುವದಕ್ಕೂ ರಾಜಿನಗ್ಯೆರೆ ಫೈಸಲ್ಮಾಡಿಸತಕ್ಕ ಬಗ್ಯೂ ನನಗೆ ಕೋರ್ಟ್‌ನಿಂದ ಸಲ್ಲಬೇಕಾಗಿರುವ ಡಿಕ್ರಿ ಮೊಬಲಗೂ, ಶಿಲ್ಕು ಮೊಬಲಗೂ, ರೀಫಂಡು ಸ್ಟ್ಯಾಂಪು ಮೊಬಲಗೂ, ದಸ್ತೈವಜು ವಗೈರೆಗಳನ್ನು ವಾಪಸು ಪಡೆಯಲಿಕ್ಕೂ ಸಹ ತಮಗೆ ಈ ಮೂಲಕ ಸಂಪೂರ್ಣ ಅಧಿಕಾರ ಕೊಟ್ಟಿದ್ದೇನೆ. ಅಲ್ಲದೆ ತಾವಾಗಲಿ ಯಾ ತಮಗೋಸ್ಕರ ಮತ್ಯಾವ ಲಾಯರಾಗಲಿ ಡಿಟಿನೋ ಮೊಖದ್ದಮೆಯಲ್ಲಿ ನಡಿಸುವ ಎಲ್ಲಾ ಕೆಲಸಗಳನ್ನು ನಾನು ಖುದ್ದು ನಡಿಸಿದಂತೆ ಒಪ್ಪಿಕೊಳ್ಳಲು ಬದ್ಧನಾಗಿ ಇದ್ದೇನೆ.

H. T. Mallappa

Bandi Mallappa.

ಈ ಮೊಕ್ತಾರುನಾಮೆ ಕೊಟ್ಟವರು ನನಗೆ ಪರಿಚಯಸ್ತರಾಗಿ ನನ್ನ ಸಮಕ್ಷಮ ರುಜು ಮಾಡಿರುತ್ತಾರೆ.

ಈ ಮೊಕ್ತಾರುನಾಮೆ ಅಂಗೀಕರಿಸಿ ಜವೇವ.

M. Venkatesh

M. Srinivasan

ಬೆಂಗಳೂರು

ತಾರೀಖು 31-10-1935.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. 868/Misc/144-35-2 *Bangalore, Dated* 26th ~~December~~ 1935.

ENDORSEMENT.

To

Mr. Bandi Mallaiya,
C/O. Mr. K.N. Srinivasan, M.A., LL.B.,
Advocate, Bangalore City.

With reference to his petition dated 31st October 1935 praying for a reconsideration of orders passed in respect of certain lands belonging to Sri Dagala Mutt, Kankanhalli, on the ground that he is the absolute owner of the survey numbers specified therein, Mr. Bandi Mallaiya is informed that Government see no reason to revise the orders already passed in the matter.

By Order,

for General Secretary to Govt.

SUBJECT .....

.....

.....

2 copies

Section Mu3

File No. 144-35

Serial No. 2

Diary No. of letter replied to ..478.....

No 868

To

Mr Bawa Mallaiya
C/o Mr K. N. Srinivasan M.A.
Advocate -
Bangalore City.

General and Revenue Secretariat

( )

the *193* .

Date of issue ..26-12-35.....

Signed by Mr B. Mudaliar Asst Secy

Your reply his letter dt 31.10.35 praying for a reconsideration of orders passed in respect of certain lands belonging to Sri Dejjalamma Kankanahalli on the ground that he is the absolute owner of the specified therein S. Nos, the Bawa Mallaiya is informed that Govt see no reason to revise the orders already passed in the matter.

B. O

24/12

For Secy

.ist of enclosures .....

Copied by .....

Examined by .....

24/12